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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,509	02/05/2004	Mark Temple	MT001	5674
7590 09/29/2004				
Mitchell K. McCarthy P.O. Box 513 Piedmont, OK 73078		EXAMINER CONLEY, FREDRICK C		
		ART UNIT 3673		
		PAPER NUMBER		
		DATE MAILED: 09/29/2004		

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/772,509

Applicant(s)

TEMPLE, MARK

Examiner

Fredrick C Conley

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3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2/5/04</u> . | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 14 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 4,853,993 to Walpin.

Claim 14 Walpin discloses a supportive upper body constraint device, comprising:

a base 22; and

means 30 supported by the base for constraining the upper body by imparting a supporting engagement and capable of continuously molding and adjusting to a shape of the upper body maintaining contiguous contact against the upper body.

Claims 14-15 and 19 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Pat. No. 6,601,253 to Tarquinio.

Claim 14 Tarquinio discloses a supportive upper body constraint device, comprising:

a base 24; and

means 20 supported by the base for constraining the upper body by imparting a supporting engagement continuously molding and adjusting to a shape of the upper body maintaining contiguous contact against the upper body.

Claim 15, wherein the means for constraining is characterized by a cover comprising a visco-elastic foam material (col. 3 lines 3-6).

Claim 19, wherein the means for constraining is characterized by the cover comprising a foam material with an ILD ratio less than 14 (col. 3 lines 3-6).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2, 4-6, 18, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 6,601,253 to Tarquinio.

Claim 1, Tarquinio discloses a supportive upper body constraint device, comprising:

a base 24 comprising a foam material with an impression load deflection and
a cover 20 on the base comprising a foam material with an ILD ratio less than the base (col. 1 lines 27-35). Tarquinio fails to disclose the ILD ratio greater than 40. It would have been an obvious to have the ILD ratio greater than 40, since Applicant has not disclosed that the ILD ratios are critical and it would appear that the ILD ratios of Tarquinio would perform equally well.

Claim 2, wherein the cover comprises an elastomeric foam material with an ILD ratio less than about 14 (col. 3 lines 3-6).

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Claim 4, wherein the cover comprises a material having a smooth surface (fig. 1).

Claim 5, wherein the base and support members are unitarily constructed.

Claims 6 and 20, Tarquinio fails to disclose the density of the cover in the range of about 3.8 to 4 pounds per cubic foot. It would have been an obvious to have the density stated above, since Applicant has not disclosed that the specific density is critical and it would appear that the density of Tarquinio would perform equally well.

Claim 18, Tarquinio fails to disclose the ILD ratio of the base greater than 40. It would have been an obvious to have the ILD ratio greater than 40, since Applicant has not disclosed that the ILD ratios are critical and it would appear that the ILD ratios of Tarquinio would perform equally well.

Claims 1-3, 5-13, and 15-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 4,853,993 to Walpin et al. in view of U.S. Pat. No. 6,601,253 to Tarquinio.

Claim 1, Walpin discloses a supportive upper body constraint device, comprising:
a base 22

a cover 30 on the base. Walpin fails to disclose the cover having an ILD ratio less than the base. Tarquinio discloses a cushion having a cover 20 with an ILD ratio less than a base 24 (col. 1 lines 27-35). It would have been obvious to one having ordinary skill in the art at the time of the invention to have ILD ratios as taught by Tarquinio in order to provide reduced compression of the mattress when a weight is placed on the upper surface of the cushion. Walpin also fails to disclose the ILD ratio of

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the base greater than 40. It would have been an obvious to have the ILD ratio greater than 40, since Applicant has not disclosed that ILD ratios are critical and it would appear that the ILD ratio of Walpin would perform equally well.

Claim 2, wherein the cover comprises an elastomeric foam material with an ILD ratio less than about 14 (col. 3 lines 3-6)(Tarquinio).

Claim 3, further comprising opposing support members (26,27) on the base, the cover disposed in a concave contour defining a cavity (fig. 6)(Walpin).

Claim 5, wherein the base and support members are unitarily constructed.

Claim 6, Walpin, as modified, fails to disclose the density of the cover in the range of about 3.8 to 4 pounds per cubic foot. It would have been an obvious to have the density stated above, since Applicant has not disclosed that the specific density is critical and it would appear that the density of Walpin would perform equally well.

Claim 7, Walpin discloses a supportive upper body constraint device, comprising:
a base (15,21,22) comprising a substantially flat longitudinal surface and an inclined surface (fig. 5);

a pair of opposing support members (26,27) on the inclined surface; and

a cover 30 continuously covering the support members. Walpin fails to disclose a portion of the inclined surface between the support members comprising a visco-elastic foam material. Tarquinio discloses cushion having a cover 20 with a portion of a surface between support members (26,28) comprising a visco-elastic foam material. It would have been obvious to one having ordinary skill in the art at the time of the invention to have a cover of visco-elastic foam material as taught by Tarquinio in order

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to provide reduced compression of the mattress when a weight is placed on the upper surface of the cushion.

Claim 8, wherein the support members are wedge-shaped, the cover disposed in a concave contour defining a cavity (fig. 6)(Walpin).

Claim 9, wherein the cover 20 comprises a smooth surface (Tarquinio).

Claim 10, wherein the base and support members are unitarily formed.

Claim 11, Walpin also fails to disclose the ILD ratio of the base greater than 40. It would have been an obvious to have the ILD ratio greater than 40, since Applicant has not disclosed that ILD ratios are critical and it would appear that the ILD ratio of Walpin would perform equally well.

Claim 12, wherein the cover comprises a foam material with an ILD ratio less than 14 (col. 3 lines 3-6)(Tarquinio).

Claim 13, Walpin fails to disclose the density of the cover in the range of about 3.8 to 4 pounds per cubic foot. It would have been an obvious to have the density stated above, since Applicant has not disclosed that the specific density is critical and it would appear that the density of Walpin would perform equally well.

Claim 15, Walpin discloses all of the Applicant's claimed limitations except wherein the means for constraining is characterized by a cover comprising a visco-elastic foam material. Tarquinio discloses cushion having a cover 20 comprising a visco-elastic foam material. It would have been obvious to one having ordinary skill in the art at the time of the invention to have a cover of visco-elastic foam material as

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taught by Tarquinio in order to provide reduced compression of the mattress when a weight is placed on the upper surface of the cushion.

Claim 16. The device of claim 15 wherein the means for constraining is characterized

by opposing support members (26,27) on the base supporting the cover in a concave contour defining a central cavity (fig. 6)(Walpin).

Claim 17, wherein the means for constraining is characterized by wedge-shaped support members.

Claim 18, Walpin also fails to disclose the ILD ratio of the base greater than 40. It would have been an obvious to have the ILD ratio greater than 40, since Applicant has not disclosed that ILD ratios are critical and it would appear that the ILD ratio of Walpin would perform equally well.

Claim 19, wherein the means for constraining is characterized by the cover comprising a foam material with an ILD ratio less than 14 (col. 3 lines 3-6)(Tarquinio).

Claim 20, Walpin fails to disclose the density of the cover in the range of about 3.8 to 4 pounds per cubic foot. It would have been an obvious to have the density stated above, since Applicant has not disclosed that the specific density is critical and it would appear that the density of Walpin would perform equally well.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fredrick C Conley whose telephone number is 308-7468. The examiner can normally be reached on m-th m-fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Shackelford can be reached on 308-2978. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FC



MICHAEL F. TRETTEL
PRIMARY EXAMINER
ART UNIT 358